

REMARKS

Applicants respectfully traverse the rejection in the outstanding Office Action, and request that it be withdrawn in view of these Remarks. Amendments have been made to provide antecedent basis for elements in claims 1, 2, and 8. Further, amendments have been made in claims 1, 2, 7 and 8 to specify that Applicant considers only the replenishment condition within a single specific time period in distinction to averaging a replenishment condition over some period of time which will cover a large number of specific time periods as taught by the prior art.

As requested, the specification has been amended to insert a number of U. S. Pat. Serial Numbers unknown at the time of filing.

Claim Rejections – 35 USC §112

Claims 1, 2 and 8 are rejected under 35 USC 112, second paragraph, as being indefinite. In response, these claims have been amended to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim Rejections – 35 USC §103

Claims 1-2, 6 and 7 are rejected under 35 USC 103(a) as being unpatentable over Balisky (U. S. 6,521,112). The Examiner states that Balisky discloses a method for controlling the content of a chemical bath, by

- 1) determining a rate of continued replenishment of a predetermined constituent of the chemical bath;

- 2) determining a replenishment condition for the chemical bath;
- 3) adjusting the rate of continued replenishment of the predetermined constituent of the chemical bath in response to the replenishment condition.

The Examiner correctly notes that "Replenishment of the chemical bath proceeds at a predetermined rate that may be based on historical experience." In reality, Balisky always adjusts the content of the bath on a historical rate averaged over time. The Abstract states, "The rate of continued replenishment of the predetermined constituent of the chemical bath is determined in response to the replenishment condition, which may be elapsed time, ampere-hours (or coulombs), number of product loads, product surface area, or line speed over time." In other words, Balisky's replenishment condition, whether it be chemical rate flow, usage, cumulative supply status, pump status, and the like, is determined as a measured historical average over time.

In contrast, as disclosed in the specification at paragraph [0029],

"It should be appreciated by the reader that making an inventory demand analysis for specifically defined time periods, as opposed to using an inventory demand analysis averaged over specifically defined time periods, is a key factor in practicing the present invention."

For example, as further explained,

"What has been discovered is that the assay demand load pattern, for example on a Monday, may be very different from the assay demand load pattern, for example on a Thursday. Further, it has been discovered that the assay demand load pattern, for example on a given Tuesday, is most

likely going to be very similar to the demand load pattern on the previous several Tuesdays."

In other words, when Balisky teaches determining a replenishment condition as a measured historical average over time, he is teaching against the essence of Applicant's invention. Balisky averages his replenishment condition over some period of time which will cover a large number of specific time periods whereas Applicant considers only the replenishment condition within a single specific time period. This limitation has been added to the claims.

As stated in the MPEP 706.02, in making an obviousness rejection under 35 USC 103(a), MPEP 706.02(j) requires that the Examiner:

"set forth (1) the difference or differences in the claim over the applied reference(s), (2) the proposed modification of the applied reference(s), and (3) an explanation why such modification would be obvious."

In making the present obviousness rejection, the Examiner has failed to explain why it would have been obvious to monitor consumption and replenishments of chemicals daily or weekly. Simply stating that it would be obvious does not make something obvious. For example, Balisky's Paced Replenishment Error is based on the Sum of Non-Paced Replenishments Since Last Analysis (claim 13) and this would logically include all of the Non-Paced Replenishments since the Last Analysis. Further, Balisky's paced units (used to determine replenishment volume) are continuously accumulated in real time. (Col.4, lines 42-44) Even further, in discussing tuning (Col. 4, line 63 to Col. 5, line 16), T (Total paced replenishment) is calculated since last analysis result. (Col. 5, lines 15-16)

Basically Balisky fails to recognize or anticipate or hint at, as Applicant has discovered, that certain replenishment activities are single time period sensitive (i.e., Monday's consumption are like Monday's consumption and are not like an average consumption "continuously over real time" or "since last time." which would encompass times other than the single time period sensitive). Applicant explains that this may arise in the instance of a clinical analyzer because of certain medical practices, as follows:

"The basis for a specifically defined time period assay demand load analysis is due to several factors among which are a range of social practices, for example, sporting events typically being on weekends and/or increased social events at holidays and the like. In addition, for reasons of efficiency, some clinical laboratories schedule select assays, for example, PSA tests, on a certain day near middle of the week, and some out-patient tests, for example glucose, are scheduled earlier in the week. Finally, certain surgeons schedule select types of surgery early in the week and other types of surgery near the end of the week, resulting in different daily patterns of pre-operation patient assays."

Averaging over a single specific time period and averaging continuously over time or continuously since a previous event are patentably distinct one from another. To make this distinction more clear, amendments have been made in claims 1, 2, 7 and 8 to specify that Applicant considers only the replenishment condition within a single specific time period in distinction to averaging a replenishment condition over some period of time which will cover a large number of specific time periods as taught by Balisky. In view of the lack of an explanation of why averaging continuously over time makes averaging over a single specific time period as is now claimed obvious, Applicant respectfully requests that the obviousness rejection of claims 1-2, 6 and 7 over Balisky be withdrawn.

Allowable Subject Matter

Claims 3-5 are objected to as being dependent upon rejected base claims. In view of the amendments made to claims 1 and 2 and the arguments presented herein, it is believed claims 3-5 are allowable as originally presented.

Applicant believes that this application contains patentable subject matter and that the foregoing explanation provides a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



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